

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION - CINCINNATI**

RODOLFO JOSE TEMAJ-FELIX,	:	Case No. 1:20-cv-544
	:	
Petitioner,	:	Judge Matthew W. McFarland
	:	
v.	:	
	:	
WARDEN, London Correctional	:	
Institution,	:	
	:	
Respondent.	:	

ENTRY AND ORDER ADOPTING REPORT AND RECOMMENDATION (Doc. 16)

This case is before the Court on Petitioner's Objection (Doc. 17) to Magistrate Judge Michael R. Merz's Report and Recommendation (Doc. 16). The Magistrate Judge recommends that this matter be dismissed with prejudice because it is barred by the statute of limitations. Noting that a petition for habeas corpus must be filed within one year of the date that a conviction becomes final on direct appeal, the Magistrate Judge found that Petitioner's filing was 1,142 days late. Moreover, the Magistrate Judge found that Petitioner's more than three-year delay could not be justifiably excused under the doctrine of equitable tolling. (*See* Doc. 16.) Petitioner objects, claiming that the failure of his attorney to advise him of the Supreme Court of Ohio's denial of review (on February 24, 2016) is grounds for equitable tolling. (*See* Doc. 17.)

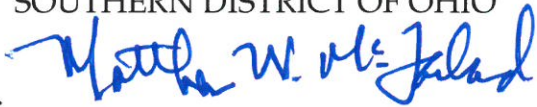
As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has made a de novo review of the record in this case. Upon said review, the Court finds that

Petitioner's Objection (Doc. 17) is not well-taken and is thus **OVERRULED**. The Magistrate Judge addressed Petitioner's argument directly and found that the length of time he waited – over three years – is not enough diligence to satisfy the requirements of equitably tolling. The Court therefore **ADOPTS** the Report and Recommendation (Doc. 16) in its entirety and **DISMISSES** this matter with prejudice as barred by the statute of limitations. Moreover, because reasonable jurists would not disagree with this conclusion, the Court hereby certifies to the United States Court of Appeals for the Sixth Circuit that any appeal would be objectively frivolous and should not be permitted to proceed *in forma pauperis*.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

By: _____



JUDGE MATTHEW W. MCFARLAND